United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

76-6091

to be argued by
MADELINE E. DE FINA

- -

RICHARD J. DE FINA,
PLAINTIFF-APPELLANT,

v.

DEPARTMENT OF TRANSPORTATION, et al.,
DEFENDANTS-APPELLEES.

- -

RICHARD J. DE FINA,
PLAINTIFF-APPELLANT,

v.

VIRGINIA M. ARMSTRONG, et al.,
DEPENDANTS-APPELLEES.

- -

RICHARD J. DE FINA,
PLAINTIFF-APPELLANT,

v.

CLARENCE M. KELLY. et al.,
DEPENDANTS-APPELLEES.

- -

RICHARD J. DE FINA,
PLAINTIFF-APPELLANT,

v.

RITCHEY WILLIAMS, et al.,
DEFENDANTS-APPELLEES.

- -

REPLY BRIEF OF PLAINTIFF-APPELLANT TO FEDERAL DEFENDANTS-APPELLEES' BRIEF

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TABLE OF CONTENTS

CASE CITED

AUTHORITIES CITED
and CONSTITUTION

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Preliminary Statement

Plaintiff rejects Federal Defendants-Appellees' "Preliminary Statement" (pp. 1, 2) and reiterates that part of his (plaintiff's) brief (pp. 1-6 inclusive) "What Is Being Appealed" as if fully set forth herein.

The federal defendants ignored the question raised as to consolidation of plaintiff's four actions with that of his attorney, whose action was different from plaintiff as to the law and facts. The only purpose to be served by the consolidation was to bias and prejudice plaintiff's four actions.

Federal defendants failed to reply to plaintiff's contention that no job existed on July 19, 1973 when the Drug Enforcement Administration ordered a full field investigation and on November 7, 1974 when the FAA sent a letter of availability to plaintiff. Both times they unlawfully invaded plaintiff's privacy and his right to be let alone. They furthered the harm and damage done to plaintiff's chances of employment by going around advertising they were investigating plaintiff for a position knowing that when plaintiff did not enter Government employ he would be put in the position stated by them in their brief (p.35)," Individuals who are unable to obtain federal employment .... may also be penalized in the non-federal sector where potential employers might simply use that standing as a measure of their ability without affording any independent opportunity to demonstrate competence."

Statement of the Case

1. Nature of the Case

Plaintiff contends that these federal defendants have made wrongful, false and malicious decisions regarding plaintiff, and/or have acted as a source of wrongful, false, and malicious information concerning the plaintiff; and/or have maintained the wrongful, false, and malicious information regarding plaintiff; and/or have circulated the false and malicious information regarding the plaintiff; and/or have published false and malicious information regarding plaintiff; hence plaintiff has experienced great emotional pressure and anguish due to the lost of his reputation and exclusion from employment situations he would have otherwise obtained, or would have remained in. (A1-A6(2))*

The plaintiff sought and still seeks disclosure, injunctive relief, expungement of the wrong and malicious information concerning himself and compensatory damages. Plaintiff has shown in his pleadings and during other proceedings that the defendants, either acting alone or in concert, did deprive him of his Constitutional, Civil and Veteran Preference Rights ; and that certain defendants were the perpetrators of criminal acts against him.

Plaintiff has maintained and still maintains that given equal protention of the law and his Constitutional and Civil rights he can prove at least two conspiratorial acts in these cases and other non-conspiratorial acts

*Plaintiff refers to his Supplemental Appendix

both of which deprive him of his rights and are of a criminal nature. (A7-A11(3))

Wrongful, false and malicious information which has been used by the defendants to provide a motive for their allegation that the plaintiff gave false information to the Government was allowed to remain in the Government's files, by the erroneous decisions of Judge Knapp concerning the plaintiff. (A12 - 13)

2. Statement of Facts
75 CIV. 2119

In February of 1960 the FBI, New York office, sent an Air Tel to an Assistant United States Attorney in Washington, D.C., as to the result of an investigation initiated by an Assistant United States Attorney in the Washington, D.C. office concerning the plaintiff.

The Air Tel stated that the F.B.I. had found no evidence of a crime-i.e.to say no threatening phone call had been made-and they would not make any report.

The Assistant United States Attorney, Washington, D.C. having received this Air Tel told F.B.I. agent Miller of the F.B.I.'s Washington office that the plaintiff was technically guilty of extortion, but due to his mental and emotional instability at the time of the"crime" he (the AUSA was now accusing the plaintiff of having committed a crime) would not prosecute the plaintiff.

When the New York F.B.I. agent said there was

no evidence of a crime the AUSA, Washington, D.C.,actually fabricated that a crime had been committed to justify his having sent out all kinds of alarms on February 17, 1960: to the New York City police, to the Washington, D.C. police, and to the military police. In addition the phone company was contacted and their records obtained. Guards were also provided around the U.S. Court of Military Appeals for two days (Supra. A14-A17).

The wide publicity of the infamous crime that the unknown Assistant U.S.Attorney had caused had to make the plaintiff and his attorney known to the police in Washington, D.C. and in New York State (Supra. A14-A17). Armed Guards and the police department were posted for two full days around the USMC. Even the military police were alerted.

The Long Island Press published on May 14, 1975 that plaintiff was a "technical violator of the extortion law" and the New York City police and the telephone company were given the story about the infamous crime this plaintiff was alleged to have committed.

This false, defamatory F.B.I criminal record against this innocent plaintiff was widely advertised and put into the files of the United States Civil Service Commission, and into the files of many other government agencies, although that there was no evidence of a crime was the decision of the two F.B.I. agents who came to plaintiff's residence and falsely pretended they came merely to ask the plaintiff if he had made a threatening

phone call to some woman clerk in the USCMA.

Plaintiff stated that he had not threatened anyone; that on November 23, 1959, he had just returned from years of service overseas to find that his counsel was being disbarred without the right to be heard and that the one in charge of this unamerican so called "grievance committee" (Fed Def. Br.p.9) was a Roman Catholic priest and lawyer named Joseph Snee.

Plaintiff called up the priest and Father Snee promised that no report would be filed until Miss De Fina was given a hearing.

Plaintiff told the F.B.I. agents that the morning of February 17, 1959,when Miss De Fina was trying to find out if the answer she had sent the Court was received by the Court the clerk would not speak to her, and he thought that he could get an answer. He tried to tell the clerk about Father Snee's promise, that was the whole conversation and he was shut off. The F.B.I. agents told him to forget the matter and they did report back according to the information received under the Freedom of Information Act that no threatening phone call had been made or could be proven to have been made (Def.Sup.A131).

The AUSA in Washington D.C. who had initiated the commotion and posting of guards was now told by the New York F.B.I. who investigated that no report would

be made. This unknown AUSA immediately started a cover-up. He knew that there was no evidence upon which to base a criminal investigation of the plaintiff and that he had wrongfully and unlawfully accused the plaintiff of the heinous crime of extortion. He covered up this violation of plaintiff's rights by making a wrongful, false, and malicious report that the plaintiff was a technical violator of the Extortion Statutes, but that due to his mental and emotional instability at the time he magnanimously would not prosecute. (A17)

The Federal defendants seek in their brief to put a pious understanding front on their illegal and unconstitutional conduct. The Federal defendants questions(Fed. def. br.p.2,3) are not to be considered in light of the true facts concerning plaintiff's actions.

Plaintiff is not suing federal agencies and the Federal Tort Claim Act does not apply(Def. br.p.46).

Plaintiff is suing federal employees individually for acting outside the scope of their authority and abusing not only their power, but the Constitutional and Civil rights of the plaintiff.

These defendants went behind an adoption; invaded plaintiff's privacy illegally,and unlawfully used their power and office to do so, and are liable to the plaintiff for compensatory damages.

3. Statement of Facts as to Plaintiff's Good Character, Stability, and Morality

It is almost impossible to believe the bias and prejudice that existed and was shown to this plaintiff by the Government, its employees, the U.S.Attorney's office, Magistrate Schreiber,Judge Knapp and his staff.

After reading their briefs, decisions,etc. it is incredible to believe that hidden in their files and concealed by a smoke screen of hate is the following evidence of plaintiff's good character, intelligence, trustworthyness, morality, and industry.

*A68a-Honorable service to his country for six years.

Worked on classified equipment while in the service.

Never disciplined. Never did anything wrong-worked hard in the bitter cold on the flight line in summer clothes, and as a result almost died. Plaintiff made no fuss that others got winter clothes and he did not.

Plaintiff graduated their Air Force course for Aircraft Electronic Navigation.

A53a- Plaintiff continued his college studies and decided to hasten the getting of his full degree by attending college in the day time. Plaintiff's disability gotten in the service when the military doctors through malpractice gave him a fissure and this fissure became so bad he needed an operation and had to drop out of

*Refers to Supplemental Appendix of federal defendants.

college (A53a).

A54a is by a professor who states "he was very serious minded and intelligent...forced to withdraw... recovery from an operation....Richard was so intelligent and I was impressed....B+ for course" This professor unlike the other professors permitted him to continue his studies at home while recovering from the operation.

A55a-This professor's statement is deleted very strangely. Plaintiff knows who she is, but obviously she said something so good they deleted it, still this part remains.

"I quickly observed in the classroom that Richard was extremely relieble. One day...Richard handled the students...was impressed by Richard's stability and maturity."

A54a-"awarded an AAS diploma at New York Community College...54credits."

A66a "City College records show nothing derogatory in De Fina's character, habits, associations, or loyalty to the U.S. Government."

A66a-Baruch College-B student-no derogatory information.

A69-70a- New York City College-graduated- nothing derogatory.

A56a-57a-Employer -Kollsman Instrument company-Septemebr 21, 1966-June 12, 1968. "attendance record good..

left under favorable circumstances...relieble and conscientious employee and is definitely eligible for re-employment."

Name deleted-A57a- Richard was on job regularly and was a very cooperative and alert employee..."

"He appeared for work punctually and impressed me as a sober, morally normal amd generally liked employee..."

"...he seemed determined to better himself... emotionally stable and well adjusted fellow."

I hope that he performs as well-for a federal agency as he did-here."

"... we intermittently have projects in the laboratory in which a technician is put in charge and supervises other technicians. I recall that Richard had this responsibility on a few occasions, and he performed well and was well liked by his co-workers."

4. Facts as to Magistrate Schreiber's Appointment by Judge Knapp

Plaintiff incorporates by reference all the facts stated in his brief and adds the following as to a pre-trial hearing on October 9, 1975 by Magistrate Schreiber.

At the outset of the hearing Judge Schreiber attempted to mask a prejudicial attitude towards plaintiff's case behind an appearance of exasperation with defendant-ITT's lawyer . Subsequently Judge Schreiber openly showed his prejudice towards plaintiff's case when he would not

concede that AUSA Gerber had patently lied to him. Judge Schreiber referred to the hearing as a circus and asked if plaintiff wished him to disqualify himself. Judge Schreiber also refused to discuss the F.B.I. matter. Days after the hearing Judge Schreiber stated in a letter to plaintiff's counsel that he had met plaintiff and his attorney a day or two after the hearing and that the plaintiff had asked him to disqualify himself. At that point he also implied that he had reported the results of a hearing to Judge Knapp. This was a complete fiction which Judge Schreiber subsequently admitted. See plaintiff's Supplemental Brief page A18-19as to the two letters sent by Judge Schreiber.

Plaintiff was ordered to stay away and only his counsel was to appear before Judge Schreiber to discuss October 14th happenings. A strong protest was made by plaintiff's counsel, but she was threatened with contempt of Court if she did not appear without plaintiff. She did. Magistrate Schreiber admitted during this hearing that it was October 9th that he disqualified himself and not October 14th. (A20-A58)

5. Facts as to the FAA

In addition to facts in his brief plaintiff submits a Supplemental Appendix with documents to establish that there was no true offer of a job by the FAA or DEA. (A 50 - A71, A71(1)-A 71 (4)).

6. Facts as to all Four Actions, 75 Civ 1526 1564, 2119, 2362.

That the CSC violated plaintiff's Veteran's Preference; that the defendants, employees of the Veteran's Administration changed records and other documents and proof that the DEA redacted form was a fraud and covered up the withholding of the report of the investigation illegally carried on for months, until plaintiff's counsel threatened to go into court and obtain an injunction to stop the illegal followiing of plaintiff and the violation of his right to be let alone.

Plaintiff reiterates what is contained in his brief and quotes from Sir Thomas May's Constitutional History of England: " Men may be without restraints upon their liberty; they may pass to and fro at pleasure; but if their steps are tracked by spies and informers, their words noted down for crimination, their associates watched as conspirators-who shall say that they are free?"

Plaintiff will not discuss the law cited by the Federal-defendants in their brief as to the exemptions mentioned in 5USC522.The facts in plaintiff's case are the facts of one whose rights have been illegally violated.

The applicable law would be Bivens vs Six Unknown Named Agents 456 Fed. Reporter 2nd series; the Constitution of the United States, and the Bill of Rights.

The only authorized investigation was for the sky marshal position. Plaintiff took all kinds of tests

for this position including psychological tests and passed them all. He became the class leader and was well liked.

So unafraid are these protected federal defendants that when counsel stated that plaintiff never had "39" positions, it was changed to "49" (Fed.Def.Sup. A7a)

Also the brazen admission by the Veteran's Administration employees that they could give the files to whom they pleased, Fed.Def.A.A152 was confirmed when AUSA Gerber sent a letter in which he admitted that the FAA had gotten the files in June 1974 at which time plaintiff did not know about the FAA and had not been offered any position by that agency.

If this action of the employees of the FAA and the U.S.C.S. and the United States Attorney's office is approved, as Judge Knapp had, this country and every citizen is in deep trouble.

Plaintiff attaches Mr. Gerber's letter (dated July 23, 1975, when he sent me documents mostly illegible from the VA, including a changed social security number and a document that the DEA had ordered a full field investigation) to plaintiff's supplemental appendix.

Plaintiff also submits the authorization they tricked plaintiff into giving, and the cover up false

telegram of Dr. John P. Skelly to the defendant Mr. Pepe, when all the while Dr. Skelly had plaintiff's medical files in his possession or the possession of other employees of the FAA.

Also attached the cover up letter of the defendant, dated March 10, 1975, that he could not sent Dr. Skelly the plaintiff's medical files as plaintiff had cancelled his authorization for the VA to send these files, then read AUSA Gerber's letter. Defendant referred to is Mr. Pepe.

The injustice done to this plaintiff has been serious, continuous, relentless and vicious and criminal. His consitituion, civil and legal rights were trampled for years by these defendants. (A 71-A77).

CONCLUSION

Plaintiff reiterates the conclusion set forth in his brief as if fully set forth herein.

Dated: Flushing, New York, October 26, 1976.

Respectfully submitted,

Madeline DeFina

MADELINE DE FINA

Attorney for Plaintiff-Appellant

COPY RECEIVED

R. L. B. Jr. for

UNITED STATES ATTORNEY

10/26/76

Marian L. Bryant